Supreme Court, U.S.
FILED

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IN THE
SUPREME COURT OF THE UNITED STATES

No. _____

October Term, 1999

ERNEST MCDUFFIE, III, d.b.a.
D&M Contracting Company
Petitioner,

v.

City of Jacksonville, Florida
Respondent,

Petition For a Writ Of Certiorari to the United States Court Of Appeals for the Eleventh Circuit

---

PETITION FOR WRIT OF CERTIORARI

Ernest McDuffie, III, pro se
8803 Yeoman Drive
Jacksonville, Fla. 32208
904-765-3149

42 pp

QUESTIONS PRESENTED

Whether Petitioner has standing pursuant to Public Law 88-352, Title VI of the Civil Rights Act of 1964, as amended and the Codes of Federal Regulation to file said discrimination lawsuit against Respondent.

Whether Petitioner has constitutional standing under the 14th Amendment of the United States Constitution to file said discrimination against Respondent.

Whether Respondent has provided legitimate justification for their practices under Title VI and the Codes of Federal Regulations.

LIST OF PARTIES

The Parties to the proceedings in the court below: Petitioner, Ernest McDuffie, III, doing business as D & M Contracting Company, a sole proprietorship, located in Jacksonville Florida, and is not a subsidiary of any other corporation.

The Respondent is the City of Jacksonville, Florida.

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II. THE COURT OF APPEALS' DECISION BRINGS INTO QUESTION THE METHODS USED TO MONITOR A RECIPIENTS UTILIZATION OF CRITERIA OR METHODS OF ADMINISTRATION THAT HAVE THE EFFECT OF SUBJECTING PERSONS TO DISCRIMINATION.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Ernest McDuffie, III, 'pro se' respectfully request that a writ of certiorari is issued to review this order by the United States Court of Appeals for the 'Eleventh Circuit issued June 17, 1999.

OPINIONS BELOW

The opinion of the Court of Appeals for the Eleventh Circuit is reprinted in the Appendix commencing at page 1.

JURISDICTION

Jurisdiction before the District Court existed under 42 U.S.C. 2000d-1. On July 30, 1998, the District Court entered summary judgment. On August 21, 1998, the Petitioner filed a notice of Appeal from the judgment. Appellate jurisdiction existed below under 28 U.S.C. 1291.

On June 17, 1999 the Court of Appeals for the Eleventh Circuit issued its order vacating judgment and ruling that the petitioner Ernest McDuffie, III 'pro se' lack of constitutional Article III standing deprives Federal Courts of jurisdiction.

On July 2, 1999, Petitioner filed a timely petition for rehearing. The Petitioner for rehearing was denied on July 29, 1999.

Jurisdiction of this "Court exists under, Public Law 88-352, Title VI of the 1964, as amended and 28 U. S.C. 1254.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED

Amendment XIV

The Fourteenth Amendment to the United States Constitution Provides in relevant part:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law' nor deny to any person within its jurisdiction the equal protection of the laws.

Section 601

Public Law 88 - 352 Title of the Civil Rights Act of 1964, as amended, in relevant part:

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits, of or be subjected to discrimination under any program or activity receiving Federal assistance."

42 U.S.C. 2000d-4a

42 U.S.C. 2000d-4a, provides in relevant part: "that a program or activity" (or just a program")includes "all the operations of" any one of a number of entities, subject only to the provso that at least one (or,as the statute provides, "any") "part of" that entity's operation "is extended Federal financial assistance."

Executive Order 12250 1-201(a) (d)1-201
Coordination of Non-discrimination Provisions, provides in relevant part: The Attorney General shall coordinate the implementation and enforcement by Executive agencies of various nondiscrimination provisions of the following laws:

(a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); (d) Any other provision of Federal statutory law which provides, in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or ex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal assistance.

13 CFR Part 112.2(b)
Code of Federal Regulation 13 CFR Part 112.2 (b) provides in relevant part: "The term Federal financial assistance includes: (1) Grants and loans of Federal funds; (2) the grant or donation of Federal property and interest in property; (3) the detail of Federal personnel; (4) the sale and lease of, and the permission to use on other than a casual or transient basis, Federal property or any interest in such property without consideration or at a nominal consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance."

13 CFR Part 112.2(d)
Code of Federal Regulation 13 Part 112.2(d),provides in relevant part:

"The terms applicant and recipient mean, respectively, one who applies of and one who receives any of the financial assistance under any of the statutes referred to in paragraph (a) of this section, the term recipient also shall be deemed to include subrecipients of SBA financial assistance, i,e., concerns which secondarily receive financial assistance form the primary recipients of such financial assistance."

15 CFR Part 8.4(1)(b) (v)(vii)

Code of Federal Regulation, 15 CFR Part 8.4(1)(b) (v)(vii) provides in relevant part:

A recipient of Federal financial assistance, or other party subject to this part under any program to which this part applies, shall not, participate directly or through contractual or other arrangements, in any act or curse of conduct which, on the ground of race, color, or national origin: (v) Treats a person differently from others in determining whether he satisfies any admission enrollment, quota, eligibility, membership,or other requirement or condition which persons that meet in order to be provided any service,financial aid, or other benefit provided under the program. (vii) Denies a person the same opportunity or consideration given others to be selected as a contractor, subcontractor, or subgrantee when a program is applicable hereto.

24 CFR Part 1.4(2)(I)

Code of Federal Regulation, 24 CFR Part 1.4(2)(I), provides in relevant part:

"A recipient, in determining the types of ...services, financial aid, or other benefits which will be provided under any such program or activity, or the class of persons to whom, or the situations in which, such ... services, financial aid, or other benefits will be provided under any such program or activity, or the class of

person to be afforded an opportunity to participate in any such program or activity, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effects of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity as respect to persons of a particular race, color, or national origin."

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24 CFR Part 570-601

Code of Federal regulation, 24 CFR Part 570-601(a),provides in relevant part:

"A recipeint may not, treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or to other requirement or condition which the individual must meet in order to be provided any facilities, services or other benefit provided under the program or activity."

24 CFR Part 570.602(v)

Code of Federal regulation 24 CFR Part 570.602(v), provides in relevant part:

"A recipient may not, treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which the individual must meet in order to be provided any facilities, services or other benefit provided under the program or activity."

29 CFR Part 31.3(2)

Code of Federal "Regulation 29 CFR Part 31.3(2), provides in relevant part: "A recipeint, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under such program, or the class of individuals

to whom, or the situation in which, such services, financial aid, other benefits, or facilities will be provided under any such program or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjection individuals to discrimination because of race, color or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin."

34 CFR Part 100.3(b)

Code of Federal Regulation 34 CFR Part 100.3(b), provides in relevant part:

"Specific discriminatory actions prohibited. (1) A recipient under any program to which this part applies may not directly or through contractual or other arrangements, on grounds of race, color, or national origin:"

34 CFR Part 106.2(h)

Code of Federal Regulation, 34 CFR Part 106.2(h), provides in relevant part:

"Recipient means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receive or benefits from such assistance, including any submit, successor, assignee, or transferee thereof."

49 CFR Part 21.5(v)

Code of Federal Regulation, 49 CFR Part 21.5(v)provides in relevant part:

A recipient may not, "treat a person differently from others in enrollment, eligibility, membership, or other requirement or condition which the individual must meet in order to be provided any facilities, services or other benefit provided under the program or activity."

49 CFR Part 23.5(i)

Code of Federal Regulation, 49 CFR Part 23.5(i), provides in relevant part:

"Minority means a person who is a citizen or lawful permanent resident of the United States and who is:(a) Black (a person having origins in any of the black racial groups of Africa ...); (f) Members of other groups, or individuals, found to be economically and socially disadvantaged by the Small Business administration section 8(a) of the Small business' act, as amended(15 U.S. 63(a)."

Ordinance Chapter 126, Parts 2,3,4,7,8 and Part 401

City Ordinance Chapter 126, Parts 2, 3, 4, 7,8 and Part 401 provides in relevant part:

126.401 Policy of city. It is hereby declared to be the policy of the city to assure equal opportunities to every person, regardless or race, religion, sex, color, age, handicap, or national origin, in securing or holding employment in a field of work of labor for which the persons qualified. It is also the policy for the city that persons comply with this policy and will not expend public funds in a manner as will encourage, perpetuate or foster discrimination.

City Ordinance Chapter 126.Part 404(a)

City of Jacksonville, Florida Ordinance Chapter 126.Part 404(a), provides in relevant part:
Nondiscrimination provisions in all city contracts. All city contracts shall contain the following provisions: (a) The contractor represents that he has adopted and will maintain a policy of nondiscrimination as defined by ordinance throughout the term of this contract.

City Ordinance Chapter 126 Part 801
City Ordinance Chapter 126. 801, Federal Affirmative Action Compliance 126.801 intent. It is the intent of the Council that to the extent that federal affirmative action compliance is required to be implemented by the city in conjunction with the bidding and awarding of city contracts that the city shall assure such compliance. This compliance shall include but not be limited to the provisions of Presidential Executive Order 11246 and those federal laws and regulations set forth in s. 400.103, Ordinance Code. "History - Ord. 92-1001-667, s. 1."

126.802 Enforcement. It shall be the responsibility and duty of the mayor to carry out the intent of the Council as expressed in s. 126.801 herein. History - Ord. 92-1001-667, s. 1.

STATEMENT OF THE CASE

This discrimination action is brought pursuant to Public law 88-352 , Title VI of the Civil Rights Act of 1964 as Amended; Code of Federal Regulations. (CFR) 41 Parts' 50-61;(CFR) 13 Parts' 101-318; (CFR) 24Parts" 0-146; (CFR) 24 Parts 500-600;(CFR) 49 parts' 1-99; (CFR) 48 Parts' 52-99; (C.F.) 15 Parts' 8-299; (CFR) 29 Parts' 0-99; (CFR) 34 Parts' 1-299; City of Jacksonville chapter 126 purchasing code, and the 14 Amendment of The U.S. Constitution.

The acts complained of in this suit are:

A. Intentionally treating Petitioner differently in the administration of Construction and Professional contracts;

B. Careless, reckless or negligent acts or omissions by Respondent employees, officers or agents in the biding and awarding of City contacts;

C. Intentional, systematic and recurring waiving of Chapter 126 of the City's Purchasing Code by Respondent employees, officers or agents.

The Petitioner, Pro se, on 1/6/97, filed complaint with jury demand: 7/30/98, case was closed; judgment entered in favor of Respondent on 7/30/98; 8/6/98 petition by Petitioner to amend order; with notice of Appeal Filed by Petitioner 8/21/98.

On June 17, 1999, the Court of Appeals for the Eleventh Circuit issued its order vacating judgment and ruling that the Petitioner Ernest McDuffie, III 'pro se' lack of Constitutional Article III standing deprives Federal Courts of Jurisdiction.

On July 2, 1999, Petitioner filed a timely petition for rehearing. The petition for rehearing was denied on July 29, 1999.

Background

Petitioner filed this action pursuant to Public Law 88-352, Title VI of the Civil Rights Act of 1964, as amended and the Codes of Federal Regulations, with Exhibit number 24 Tabs 1-10 and petitioner Deposition on February 6, 1998 in the District Court. See Docket Numbers #38, 39 and 40 pages' 1-567, are used to indicate that Petitioner has constitutional standing to file this action against the Respondent.

Title VI - Nondiscrimination in Federally assisted programs, Sec. 601. states no person in the United States shall, on the ground of race, color or national origin, be exclude from participation in, be denied the benefits of or be subjected to discrimination under any program or activity receiving federal financial assistance.

As cited in the Grove City v. Terrel H. Bell, 465 US 55.79 L. Ed. 2d 516 No. 82-792, argued Nov. 29, 1983; decided Feb. 28, 1984, a "recipient" is defined in 34 CFR, 106.2(h) 1983 to include:

> "[A[ny public or private agency, institution or organization or other entity or any person,to whom federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives or benefits from such assistance..."

It Further states:

> The Title IX was patterned after Title VI of the Civil Rights Act of 1964 . . . Except for the substitution "sex" in Title IX to replace the words, "race, color, or national origin in Title VI, and for the limitation of Title IX to

> "education" programs or activities, the two statutes use identical language to describe their scope."

The case Association of Mexican American Educators v. The State of California Commission on Teacher Credentialing No. C-92-3874 WHO. U.S. District Court. N.D. California, Aug. 25, 1993, states Plaintiffs under Title VI of Civil Rights Act, which prohibits use of federal funds to subsidize racial discrimination, may maintain private right of action based on administrative regulations promulgated pursuant to Title VI; Supreme court has held that those regulations are valid and that they further congressional purpose of withholding federal funds from discriminatory practices. Civil Rights Act of 1964, 601, as amended, 42 UCA 2000d.

Petitioner filed this action pursuant to the 14th Amendment of the US Constitution, Affidavits in Exhibit Number 24 Tabs 1-10 and Petitioner Deposition on February 6, 1998, in the District Court. See Docket Numbers #38, 39 and 40 pages' 1-567, are used to indicate that Petitioner has constitutional standing to file this action against the Respondent.

As stated under the equal protection provision of the 14th Amendment to the U.S. Constitution "nor shall any state deprive any person of Life, Liberty, or Property without due process of Law." The Respondent governing body waived the provisions of Chapter 126 of the City's purchasing code by adopting ordinances that circumvent Parts 2, 3, 4, 7 and 8 o f said code.

The Respondent admitted to waiving certain provisions of Chapter 126 of the Purchasing Code. This practice deprived the Petitioner and 88 subcontractors an

opportunity to participate in the contracting process (see exhibit 24 tab 10).

Black African-American businesses in Jacksonville, Florida are denied participation in public contracting opportunities, they are deprived of Liberty that's provided under the 14th Amendment of the Constitution.

The freedom and privilege to enjoy all the rights granted by the United States and a particular state's constitution, as well as other rights such as right to earn a living, acquire knowledge, and marry, refers to the fullest scope of freedom one has, but at the same time limits those freedoms so as not to interfere with another persons exercise of them. "The Due Process Clause requires that termination of a property right to continued employment must be preceded by notice and an opportunity for a hearing on the matter." Adams v. Sewell. No. 90-3645, United States Court of Appeals, Eleventh Circuit. Nov. 4, 1991.

Pursuant to 42.2(2), when government erects a barrier that makes it more difficult for members of one group to obtain benefit than it is for members of another group, member of former group seeking to challenge barrier need not allege that he would have obtained the benefit but for the barrier need not allege that he would have obtained the benefit but for the barrier in order to establish standing. Further, the denial of equal treatment resulting from imposition of the barrier, not ultimate inability to obtain the benefit gives standing for equal protection under the 14th Amendment of the United States Constitution.

Associated General Contractors of America v. City of Jacksonville, Florida, No. 91-1721, June 14, 1993. By waiving the provisions of Chapter 126 of the City's

Purchasing Code, the government erected a barrier that blocked the Petitioner an African-American business owner.

In the order dated June 17, 1999, the court did not state that the Petitioner did not make a prima facie case under Title VI, Federal Regulations. As stated in Ga. St. NAACP v. State of Georgia No. 84-8771. United States Court of Appeals Eleventh Circuit Oct. 29, 1985,"plaintiff, who asserts disparate impact claim under Title VI of Civil Rights Act of 1964 601 et seq. 42. U.S.C.A. 2000d et seq. must show by preponderance of evidence that facially neutral practice has racially disproportionate effect, where upon burden shift to defendant to prove substantial legitimate justification for its practice; plaintiff then may ultimately prevail by preferring equally effective alternative practice which results in less racial disproportionately or proof that legitimate practices are pretext for discrimination." Further, to establish prima facie case of disparate impact based on race, plaintiffs must show that defendants' racially neutral practice detrimentally affects persons of particular race to greater extent than other races. Civil Rights Act of 1964 601 et seq., 42 U.S.C.A. 2000d et seq.

In this action, the Respondent did not provide a substantial legitimate justification for its practice of violations under Title VI and Federal regulations.

According to Brown vs. Crawford, No. 89-5927 USCA, 11th Cir (1990) 2544, while a pro se litigant does not escape essential burden under summary judgment standards of establishing that is genuine issue as to a fact material to his case in order to avert summary judgment, court of appeals must view factual inferences favorably toward party not moving for summary

judgment and pro se complaints are entitled to liberal interpretation by the court.

Petitioner a black African-American submitted signed affidavits pertaining to this action inclusively as referenced in Exhibit 24 tab's 1-10. Petitioner deposition in said cased referenced Docket numbers 38, 39, 40, page's 1-567. Said items were filed in the said case notwithstanding prior to ruling by the United States District Court Middle District of Florida, Jacksonville Division, on July 30, 1998, as well as the decision entered by the U.S. Court of Appeals Eleventh Circuit on June 17, 1999. Further, Petitioner has constitutional standing to file action against Respondent City of Jacksonville, Florida pursuant to Public Law 88-352, Title VI of the Civil Rights Act of 1964 as amended, the Code of Federal Regulations and the 14th Amendment of the United States Constitution.

Documents and evidentiary evidence to support the petitioner constitutional standing were in the court's record were overlooked or ignored at the time of the June 17, 1999 ruling. Crawford v. Lamantia No. 93-2241 USCA, 1st Cir. 1994.

A barrier (waived Purchasing Code) erected by City of Jacksonville Florida government makes it more difficult for Petitioner a Black African-American group member to obtain benefit than it is for members of another group.
Additionally, rights protected by the United States Constitution of Equal Protection and due Process was violated by the City government with the waiving of Chapter 126 of Purchasing Code.

The Respondent, City of Jacksonville is a recipeint of federal financial assistance funds in this action. Pursuant to Moreno v. Consolidated Rail Corporation, nos., 94-1231, 94-1247 United States Court of Appeals Sixth

"Circuit, ov., 1996, "by accepting federal funds for its railroad crossing improvements, railroad was a 'recipient of federal assistance' within the meaning of the Rehabilitation Act, even though Federal funds came to the railroad through state of Michigan rather than . . . by United States directly, and members of issue; railroad owned and operated railroad crossing improvements and federal government paid for obligation that railroad would otherwise have had to pay out of their own funds, subject in some case to equal sharing of costs with local public authorities."

Monell v. Department of Social Services of the City of New York, et al. 436 US 658, 56 L. Ed 2d 611, 98 5 ct 2018 [no. 75-1914], June 6, 1978, held that "local governments, municipal corporations, and school boards are persons subject to liability under 42 USCS 1983 for violating another persons federally protected rights, and thus are not wholly immune from suit under the statue covering legal as well as natural persons." Civil Rights - 12.5 - Liability for violations - Local governing bodies, as person's subject to liability under 42 USCS - 1993 for violating another person's Federally protected rights, local governing bodies can be sued directly under 1983 for monetary, declaratory of injunctive relief where the action that is alleged to be unconstitutional implement or executes a policy statement, ordinance, regulation or decision officially adopted and promulgated by the body's officers."

The Respondent City of Jacksonville Florida's governing body, the City Council, waived the provisions of Chapter 126 of the city's Purchasing Code, by adopting ordinances which circumvent Parts 2, 3, 4, 7, and 8 of said code. The Respondent admitted to waiving certain provision of Chapter 126 of the Purchasing Code. Parts 2, 3, 4, 7, and 8 of the Purchasing Code covers

equal business opportunities for minority businesses. The parts waived, prohibits the violation of Title VI, Public law 88-352, 14 Amendment of U.S. Constitution, and section 3 of the Small Business Act. (See Petitioner exhibit #1.)

Further, the court up held extra effort in awarding contracts to businesses traditionally left out of the bid and award process. The Court stated: "they were required, to the greatest extent feasible, to contract with Ramirez, this is strong language. It does not give the city officials the broad discretion that the trial court concluded. We think that greatest extent means what it says the maximum and that they were therefore obliged to take every affirmative actin that they could properly to make the award to Ramirez. Interesting enough, the Respondent did just the opposite, waived the provisions of the Purchasing Code, thereby eliminating those protected under Title VI of Civil Rights Act which prohibits use of Federal funds to subsidize discrimination, may maintain private right of action, base on administrative regulation promulgated pursuant to Title VI; Supreme Court has held that those regulations are valid and that they further congressional purpose of withholding Federal funds for discriminatory practices.

REASONS FOR GRANTING THE PETITION

I. THE COURT OF APPEALS' DECISION CONFLICTS WITH THE U.S. SUPREME COURTS OPINION IN NORTHEASTERN FLORIDA CHAPTER OF THE ASSOCIATED GENERAL CONTRACTOR OF AMERICA V. CITY OF JACKSONVILLE FLORIDA NO. 91-1721.

The Supreme Court in Northeastern Florida Chapter of the Associated General Contractors of America v. City

of Jacksonville Florida maintained that when government erect a barrier that makes it more difficult for members of one group to obtain benefit than it is for members of another group, member of former group seeking to challenge barrier need not allege that he would have obtained the benefit but for the barrier in order to establish standing. Further, the denial of equal treatment resulting from imposition of the barrier, not ultimate inability to obtain the benefit gives standing for equal protection under the 14th Amendment of the United States Constitution. By waiving the provisions of Chapter 126 of the City's Purchasing Code, the government erected a barrier that blocked the Petitioner an African-American business owner.

A barrier (waived Purchasing Code) erected by City of Jacksonville Florida government makes it more difficult for Petitioner a Black African-American group member to obtain benefit than it is for members of another group. Additionally, Rights protected by the United States Constitution of Equal Protection and Due Process was violated by the City government with the waiving of Chapter 126 of Purchasing Code.

II. THE COURT OF APPPEAL'S DECISION BRINGS INTO QUESTION A RECIPIENTS' UTILIZATION CRITERIA OR METHODS OF ADMINISTRATION THAT HAVE THE EFFECT OF SUBJECTING PERSONS TO DISCRIMINATION.

The Respondent intentionally treated the Petitioner different in the administration of the construction and professional contracts thereby violating his civil rights,

that are protected under Title VI of the Civil Rights Act, of 1964 as amended, Public Law 88-352, 29 CFR Part 31.3(2), 15 CFR Part 8.4(1)(b)(v)(vii), 24 CFR Part 570.602(v), 24 CFR Part 1.4, 13 CFR Part 112.2b,d and 34 CFR Part 106.2(b), and 49 CFR Part 23.5(i).

The Supreme Court, in Grove City College v. Bell, held that Title VI's non-discrimination provision only covered the particular program receiving Federal funds, the Civil Rights Restoration Act of 1987 went further to include the entire organization of a Federal funds recipient.

"Recipient means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or to the entity, or any said person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receive or benefits from such assistance, including any submit, successor, assignee, or transferee thereof."

U.S. Code, 42 U.S.2000d-4a, provides that a "program or activity (or just a program')includes all the operations of " any one of a number of entities, subject to the proviso that at least or (or, as the statue provides, "any") "part of" that entity's operation is extended Federal financial assistance." The same principle applies in this case, so long as any part of that Respondent "operations" receive federal financial assistance," "all" of that city operations" are programs or activities" and are subject to Title VI.

Title VI case "Hodges by Hodges v. Public Building Commission of Chicago," No. 93 4329, U S "District

Court, N.D. Illinois, Eastern Division, Sept. 14, 1994, where a similar defense of not receiving federal assistance was given, the Court stated:
"All of the parties place far too much importance on whether or not the defendants actually receive federal funding. In the post CRA era, whether or not an entity receives federal funds is no longer the sine qua non of a Title VI action. Consistent with the broad definition of "program or activity" courts have rejected such a formalistic approach in favor of examining the defendant's relationship to the entity receiving the federal funds."

In the case Association of Mexican American Educators v. The State of California Commission on Teachers Credentialing. No. C-92-3874 WHO, U.S. District Court, N.D. California, Aug. 25, 1993, the Court states: "Plaintiffs under Title VI of Civil Rights Act, which prohibits use of federal funds to subsidize racial discrimination, may maintain private right of action based on administrative regulations promulgated pursuant to Title VI; Supreme court has held that those regulations are valid and that they further congressional propose of withholding federal funds from discriminatory practices."

III. THE COURT OF APPEAL'S DECISION BRINGS INTO QUESTION HOW ADVERSE OF IMPACT DOES AGREEMENTS, ARRANGEMENT OR OTHER SPECIAL CONTRACTS, HAVE ON A GROUP PROTECTED BY TITLE VI.

The court stated "Elston vs. Talladega County Board of Education 997 F. 2d 1394, 1406 (11th Cir. 1993), "when regulations are promulgated pursuant to Title VI, they "may validly proscribe. Actions having a disparate

impact on groups protected By the Statue, even if these action are not intentionally discriminatory." , (Citation omitted). The court ruled in McDuffie v. First Union Bank the Regulations Cited by the Plaintiff appear to proscribe action "having a disparate impact "on groups protected by the statue" se 15 CFR part 8, subpart a, sec 8.4 (b) (2) - (3) and compare with Elston, 999 F. 2d at 1407 N. 12 Quoting relevant department of education Title VI Regulation. For purpose of disparate impact standard." (McDuffie v. First Union - No. 97-1533).

As stated in Elston "to establish liability under the Title VI regulation disparate impact scheme a plaintiff must —— demonstrate by a preponderance of the evidence that a facilally neutral practice has a disproportionate adverse effect on a group protected by Title VI." 97 F. 2d at 1407.

The court stated: "however, he has not identified one document showing that the defendant's action had a disproportionate effect on African-Americans or that race played any role whatsoever in defendant actions." In this action, the Petitioner has on file in the current court record 90 affidavits, from African American business owners that live in the Jacksonville Florida area. The affidavits were filed with the court on October 2, 1997 along with a motion for leave to file joinder of parties pursuant to federal rules 12, 19 and 20 of civil procedure, also in the current court record are affidavits, depositions, in Exhibits 23 and 24 filed on April 7, 1998, in the Petitioner's brief in support of motion to deny Respondent's motion for partial summary judgment.

Additional Exhibits that are currently in the court records show the Respondent City of Jacksonville discrimination action has had a disproportionate impact on Black African-American in the Jacksonville, Florida areas are:

Exhibit: #4 - The disparity study, City of Jackson-Jacksonville, Florida by D.J.Miller & Associate pages 1-310 appendixes A, B, C, and Bibliography pages A-64-A-73.

Exhibit #5 - Tab (A) - Resolution Florida Advisory Committee, US Civil Rights Commission, pages 1-A-3A. Executive Order 12250 pages 3-B-3E Tab - (B). Transcript of proceedings Florida Advisory Committee, pages 1-287.

Exhibit #7 - Skills work innovative force training (S.W.I.F.T.) pages 1 -86.

Exhibit #8 - D & M Contracting Company and Ernest McDuffie, III, History and Biography, pages 1-43.

Tab - (C) -Perceptions of racial and ethnic tensions in Florida. Summary report U.S. Commission on Civil Rights, Florida pages 1 -16.

Tab - (E) - News articles on racial tensions in Jacksonville letter from U.S. Dept. of Labor, pages 1-39, and also see Exhibit #1. Chapter 126, City of Jacksonville, Florida purchasing code pages 633-668.4 ?Chapter 118, City of Jackson-Jacksonville Miscellaneous Appropriations, pages 542-551.

Deposition of Ernest McDuffie III Filed on 2/6/98 Docket numbers #38, #39, and #40 pages 1-567.

Exhibit #1, Chapter 126, City of Jacksonville, Florida purchasing code part 6 on page 658 under 126.6019 and 603 legislative findings and policy.

The Respondent the City of Jacksonville, Florida admits that African-American business enterprise, has suffered from the effects of past or present discrimination within the business community of the City of Jacksonville, and which has been certified as such under 5.126.606. Active participation in the business community of the City of Jacksonville creates a presumption that the applicant has suffered from the effects of past or present discrimination within such business community."

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

The Court of Appeals deprived the petitioner of due process.

Respectfully submitted,

Ernest McDuffie, III, pro se
8803 Yeoman Drive
Jacksonville, Fla 32208
904-765-3149

October ____1999

APPENDIX

(DO NOT PUBLISH)

FILED
US COURT OF APPEALS
ELEVENTH CIRCUIT
JUN 17 1999
THOMAS K. KAHN
CLERK

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 98-3184
Non-Argument Calendar

D. C. Docket No. 97-14-CIV-J-20C

ERNEST MCDUFFIE, III, Individually,
d.b.a. D & M Contracting Co.,

Plaintiff - Appellant,

Versus

CITY OF JACKSONVILLE, FLORIDA,

Defendant - Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(June 17, 1999)

Before EDMONDSON,COX and HULL, Circuit Judges.

PER CURIAM:

Ernest McDuffie appeals following summary judgment against him on his pro se Title VI action, 42 U.S.C. §2000d, against the City of Jacksonville.

The district court concluded that McDuffie failed to set forth by affidavits or other evidence all of the elements of constitutional standing. We agree. Because a lack of Article III standing deprives federal courts of jurisdiction, we vacate the judgment on the merits in Jacksonville's favor and remand with instruction for the district court to dismiss the action for want of subject matter jurisdiction.

VACATED AND REMANDED WITH INSTRUCTION.

(DO NOT PUBLISH)

FILED
US COURT OF APPEALS
ELEVENTH CIRCUIT
Jul 29 1999
THOMAS K. KAHN
CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 983184

ERNEST MCDUFFIE, III, Individually, d.b.a. D & M Contracting Co.,

Plaintiff - Appellant,

versus

CITY OF JACKSONVILLE, FLORIDA,

Defendant - Appellee.

On Appeal from the United States District Court for the Middle District of Florida

---

(June 17, 1999)

Before EDMONDSON, COX and HULL, Circuit Judges.

PER CURIAM:
The petition(s) for rehearing filed by appellant, Ernest McDuffie, III, is denied.

ENTERED FOR THE COURT:
E. R. COX
UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

FILED
98 JUL 30 PM
CLERK MID DIST OF FLA
JACKSONVILLE, FLORIDA

ERNEST McDUFFIE,III,
Individually and doing business as
D & M Contracting Company,

Plaintiff,

v. **Case No. 97-14-Civ-J-20C**

CITY OF JACKSONVILLE,FLORIDA,
Defendant.

ORDER

Before the Court is Defendant's Second Motion for Summary Judgment (Doc.No.61, filed April 20, 1998). Plaintiff filed a Response on May 8, 1998. See Doc No. 66.[1] Also before the Court is Defendant's Motion to Strike (Doc. No. 67, filed May 21, 1998). Plaintiff filed his Response to that Motion on June 9, 1998. See Doc. No. 70.

Plaintiff alleges in his Complaint that the City of Jacksonville violated Title VI of the Civil Rights Act of 1964. Specifically, Plaintiff alleges that Defendant discriminated against him by "[t]he waiving of Chapter 126 of the City's Purchasing Code on numerous capital improvement projects." Amended Complaint (Doc. No.

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[1] On March 27, 1998, the Court sent Plaintiff the Summary Judgment Notice with respect to Defendant's Motion for Partial Summary Judgment. See Doc. No. 52. On April 27, 1998, the Clerk sent Plaintiff the Summary Judgment. See Doc. No.64, These Notices warned the Plaintiff that all material facts asserted by the Defendant in the Motion would be considered to be admitted by Plaintiff unless controverted by proper evidentiary materials.

14, filed March 17, 1997) at ¶6.A. Plaintiff lists eleven (11) such projects. Id. Plaintiff also alleges that Defendant discriminated against him by treating him differently in the administration of contracts, and by careless, reckless, or negligent acts or omissions in the bidding and awarding of city contracts. Amended Complaint at ¶6.B. Plaintiff lists thirteen (13) such projects. Id. In the Court's Order resolving Defendant's Motion for Partial Summary Judgment, the Court dismissed Plaintiff's claims arising out of eight (8) Jacksonville area projects, but allowed at that time his claims arising out of Ordinance 89-26-2 to continue. See Order (Doc. No. 59, filed April 15, 1998). Defendant now seeks complete judgment against Plaintiff.

DISCUSSION

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the initial burden of showing the Court, by reference to materials on file that there are no genuine issues of material fact that should be decided at trial. Clark v. Coats & Clark, Inc., 929 F.2d 604, 608 (11th Cir. 1991). When a moving party has discharged its burden, the nonmoving party must then "go beyond the pleadings," and by its own affidavits, or by "depositions, answers to interrogatories, and admissions on file," designate specific facts showing that there is a genuine issue for trial. Celotex Corp v. Catrett, 477 U.S.317,324 (1986).

In determining whether the moving party has met its burden of establishing that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law, the Court must draw inferences from the

evidence in the light most favorable to the nonmovant, Key West Harbor v. City of Key West, 987 F.2d 723, 726(11th Cir. 1993), and resolve all reasonable doubts in that party's favor, Spence v. Zimmerman, 873 F.2d 256, 257 (11th Cir. 1989).

Thus, if a reasonable fact finder evaluating the evidence could draw more than one inference from the facts, and if that inference introduces a genuine issue of material fact, then the court should not grant the summary judgment motion. Augusta Iron and Steel Works v. Employers Insurance of Wausau, 835 F.2d 855, 856 (11th Cir. 1988). It must be emphasized that the mere existence of some alleged factual dispute will not defeat an otherwise properly supported summary judgment motion. Rather, "the requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc. 477 U.S. 242,248 (1986). A dispute about a material fact is "genuine" if the "evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id. at 248. The inquiry is "whether the evidence presents a sufficient disagreement to require submission a jury or whether it is so one-sided that one party must prevail as a matter of law." Id. at 251-52.

The Court will outline all of Defendant's arguments before turning to Plaintiff's responses. Defendant first argues that Plaintiff cannot prevail on his claims arising out of seven of the remaining projects because they are not funded by federal dollars. Title 42 section 2000(d) states that "No person in the United States shall, on the ground of race,color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. §2000d (emphasis added). As the statute makes clear, and as stated in the case law, Plaintiff must demonstrate that the Defendant was recipient of federal financial assistance. See Dowdell v. City of Apopka, Fl.

511 F. Supp. 1375 (MD.Fla. 1981), aff'd, 698 F. 2d 1181 (11th Cir. 1982). In the present case, Defendant has submitted the affidavit of Richard W. Cohee ("Cohee"), the City Treasurer for the City of Jacksonville since April 20, 1981. Cohee states that he oversees capital improvement projects for the City and that the following seven projects listed by Plaintiff in his Complaint are not funded, in whole or in part, by federal dollars: (1) St. James Building renovation (Ord. 96-29-1); (2) The Performing Arts Center (Ord. 95-1047-681); (3) Renaissance Design Build (Ord. 95-911-520); (4) Construction of Police Substation at Wolfson High School (Ord 94-970-521); (5) The Gator Bowl Renovation Facility Program, signed September 7, 1993; (6) The Former St. Andrew Church (Ord. 96-1070); and (7) The E. B. Monitoring Services, City Contract Number 6799-2, signed February 18, 1995; Amendment to Agreement signed February 28, 1995. See Affidavit of Richard W. Cohee attached to Defendant's Second Motion for Summary Judgment at ¶¶ 1, 4, 6-8. Defendant also argues that with respect to the Blodgett Homes Redevelopment (Phase I) Project, Bid No. CF-0015-93, Plaintiff was the fourth lowest bidder and did not submit the required 5% bid bond and that further, Plaintiff did not submit a bid when the project was rebid. See Affidavit of Daniel W. Haskell attached to Defendant's Second Motion for Summary Judgment at ¶¶ 12, 16.

With respect to all of Plaintiff's claims, Defendant argues that Plaintiff lacks constitutional standing.

> [O]ur cases have established that the irreducible constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an "injury in fact" -- and invasion of a legally

> protected interest which is (a) concrete and particularized, see id., at 756, 104 S.Ct., at 3327; Warth v. Seldin, 422 U.S. 490, 508, 95 S.Ct.2197, 2210, 45 L.Ed.2d 343 (1975); Sierra Club v. Morton, 405 U.S. 727, 740-741,n. `6, 92 S.Ct. 1361, 1368-1369, n. 16, 31 L.Ed.2d 636 (1972); and (b) actual or imminent, not 'conjectural' or hypothetical, Whitmore, supra, 495 U.S. at 155, 110 S.Ct., at 1723 (quoting Los Angeles v. Lyons, 461 U.S. 95, 102, 103 S. Ct 1660, 1665, 75 L.Ed.2d 675 (1983)). Second, there must be a causal connection between the injury and the conduct complained of -- the injury has to be "fairly" ... trace[able] to the challenged action of the defendant, and not ... the[e] result [of] the independent action of some third party not before the court." Simon v. Eastern Ky., Welfare Rights Organization, 426 U.S. 26, 41-42, 96 S.Ct. 1917, 1926, 48 L.Ed.2d 450 (1976). third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." Id., at 38, 43, 96 S.Ct.,at 1924, 1926.

Lujan v. Defenders of Wildlife, 504 U.S. 555, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992).

Defendant argues that Plaintiff has failed to come forward with evidence satisfying either of the first two elements, that is, he has failed to demonstrate an injury in fact and has failed to demonstrate a causal connection between his alleged injury and the Defendant. In support of its argument, Defendant pints to the fact that Magistrate Judge Corrigan has already found Plaintiff's written damages submissions to be inadequate, see Order (Doc. No. 30, filed November 25, 1997) and that Plaintiff has failed, either through additional documentary evidence or through testimony, to shed and additional

light on his alleged injury.

Finally, Defendant argues that Plaintiff lacks standing under Title VI because he is not the intended beneficiary of the federal funds. As previously stated, "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be ddenied the benefits of, or be subjected to discrimination under any program ora activity receibing Federal financial assistance." 42 U.S.C. §2000d. To bring an action under Title VI, a plaintiff must demonstrate that he was the intended beneficiary of, an applicant for, or a paraticipant in a federally funded program. Jones b.Metropolitan Atlanta Rapid Transit Authority, 681 F.2d 1376 (11th Cir. 1982), cet. denied, 465 U.S. 1099 (1984); Simpson b. Reynolds Metals Co., Inc., 629 F.2d 1226 (7th Cir.1980).[2]

As an initial matter, the Court agrees with the Defendant that Plaintiff's Response in Opposition to the Motion for Summary Judgment is insufficient to show that genuine issues of material fact exist. Plaintiff's Brief is unsupported be an affidavit. The Cout is compelled to discredit the inforrmation therein. See Helmich v. Kennedy, 796 R.2d 1441, 1443 (11th Cir. 1986); Oglesby v. Terminal Transport Co., 543 F.2d 1111 (5th Cir, 1976).[3] While the Court need not strike Plaintiff's

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[2] The Court is aware of the New Jersey District Court's opinion in Bryant v. New Jersey Department of Transportation, 998 F. Supp. 438 (D.N.J. 1998), which held that the Supreme Court's decision in National Credit Union Association v. First National Bank & Trust Co., 118 S. Ct. 927 (1998), eliminated the requirement that a Plaintiff suing under Title VI must show that he is the intended beneficiary. The Court finds that neither opinion changes the law in the Eleventh Circuit with respect to Title VI's standing requirements.

[3] Plaintiff's attempt to rehabilitate his submissions by filing a signed and sworn "Certificate of Authenticity" must fail. In the Certificate,

submissions, the Court does note that his submissions fail to rebut the arguments made by Defendant, to wit, that Plaintiff cannot maintain the present action.

Having found that the Plaintiff has failed to file "proper evidentiary materials" in opposition to Defendant's properly supported Motion for Summary Judgment, the Court is required to grant summary judgment in favor of the Defendant. Out of an abundance of caution, however, the Court has reviewed the materials submitted by the Plaintiff and finds in any event that those submissions do not contravene Defendant's motion. For example, it is not enough for Plaintiff to show that the City of Jacksonville receives federal financial assistance. Plaintiff must show that the federal funds went to the particular projects in which he was allegedly denied benefits and that there is a nexus between the federal financial assistance and the discrimination. Plaintiff has not done so. Nor is Plaintiff's response with respect to the Blodgett Homes Redevelopment Project sufficient to show that he was anything other than the fourth lowest bidder or that he did nor rebid the project.

Further, Plaintiff has not demonstrated that he has suffered an injury in fact. Plaintiff's statement in his Response that the waving of Chapter 126 caused him injury because of his race and color is insufficient to

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Plaintiff states as follows: "I certify that the documents presented in this action (Case 97-14-Civ-J-20C) as Exhibits #32, A and B, are authentic, the dates, statements, specific facts, signatures, or other information have not been altered, or modified by the underling marks placed on documents." The Court has reviewed Exhibit #2, A and B (the documents physically attached to Plaintiff's Response to Defendant's Second Motion for Summary Judgment) and finds these documents irrelevant to the specific arguments made by Defendant. The Court has also reviewed another Exhibit filed by Plaintiff that is marked "Exhibit #32 (containing tabs 1 through 4), and finds that it, too, is irrelevant to Defendant's arguments.

satisfy the standing requirement. Plaintiff has not demonstrated whether Defendant's actions harmed him, and if so, how Defendant's actions harmed him. The Court cannot speculate about the damages allegedly suffered by the Plaintiff and thus cannot allow Plaintiff's case to go forward.[4] Finally, Plaintiff has not demonstrated that he is the intended beneficiary of the federal dollars given to the remaining projects.[5]

Clerk shall enter judgment in favor of the Defendant and against the Plaintiff and shall close the file.

DONE AND ENTERED at Jacksonville, Florida, this 3rd day of July, 1998.

HARVEY E. SCHLESINGER
United States District Judge

Copies to:
Loree L. French, Esq.
Ernest McDuffie,III
Law Clerk

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[4] Furthermore, the Court is not satisfied that Plaintiff can show intentional discrimination. Title VI bars only intentional discrimination. Elston v. Talladega County Board of Education, 997 F.2d 1394, 1406 (11th Cir. 1993). The voluminous record is devoid of evidence that if Defendant treated Plaintiff differently, it did so based on Plaintiff race and/or color.

[5] Defendant argues only that seven of the projects about which Plaintiff complains did not receive federal funding. The Court assumes, then, that federal dollars did go to the remaining projects. However, it is still Plaintiff's burden to show that he was the intended beneficiary of the federal funding.

FILED
99 SEP 8 PM
CLERK MID DIST OF FLA
JACKSONVILLE, FLORIDA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ERNEST McDUFFIE,III,
Individually and doing business as
D & M Contracting Company,

Plaintiff,

v. **Case No. 97-14-Civ-J-20C**

CITY OF JACKSONVILLE,FLORIDA,
Defendant.

ORDER

On July 30, 1998, this Court granted summary judgment in favor of the Defendant, see Doc. No. 75, to which the Plaintiff appeealed. On appeal, the Eleventh Circuit Court of Appeals vacated the judgment entered by this Court, with the instruction to dismiss this case for want of subject matter jurisdiction. See Doc. No. 82, filed September 1, 1999. Accordingly, since their is no Article III standing in this case, it is hereby ORDERED that this case is DISMISSED for lack of subject matter jurisdiction. The Clerk is directed to close the file.

DONE AND ENTERED at Jacksonville, Florida, this 8th day of September, 1999.

HARVEY E. SCHLESINGER
United States District Judge

Copies to:
Loree L. French, Esq.
Ernest McDuffie,III
Garry Randolph, Courtroom Deputy
Law Clerk